Filed 12/2/04 In re C.C. CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re C.C., a Person Coming Under the Juvenile Court Law.	B174550 (Los Angeles County Super. Ct. No. CK49996)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. D.C., Defendant and Appellant.	

APPEAL from orders of the Superior Court of Los Angeles County. Stephen Marpet, Juvenile Court Referee. Affirmed.

Aida Aslanian, under appointment by the Court of Appeal, for Defendant and Appellant.

Larry Cory, Assistant County Counsel and Pamela Landeros, Deputy County Counsel, for Plaintiff and Respondent.

D.C. (father), an incarcerated parent, appeals the orders entered by the juvenile court at an 18-month review hearing in a dependency matter involving his three children, C.C.1,[1] C.C.2,[2] and N.C. (collectively, the minors). In particular, father contends that his reunification services should not have been terminated because: (1) he was not transported from prison to the hearing or given proper notice of the proceeding; and (2) the Department of Children and Family Services (the Department) failed to provide him with reasonable reunification services.

We affirm.

FACTS

The minors were detained after the Department received a referral from the Child Abuse Hotline alleging that father was threatening to kill the minors.[3] Upon being interviewed, each of the minors stated that father hits them. According to C.C.1, father steals from stores, he comes home drunk, he has physical fights with mother and, on one occasion, he grabbed C.C.2's private parts. C.C.2 stated that she had been touched by father in inappropriate ways, and she also confirmed that mother and father often fight. Thereafter, the minors were placed with their maternal grandmother (grandmother).

Father enrolled in counseling at Children's Institute International that addressed substance abuse, anger management, parenting and domestic violence. In addition, a social worker provided father with referrals for sexual abuse counseling. At the disposition hearing, father was ordered to attend an alcohol program with random testing, domestic violence counseling, parent education, individual counseling to address anger management and sexual abuse issues, and, when appropriate, conjoint counseling with mother and the minors. He enrolled in a 52-week program for domestic violence and a

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1 C.C.1 is D.C.'s son.

2 C.C.2 is D.C.'s daughter.

3 L.L. (mother) was incarcerated at the time for burglary in violation of Penal Code section 459.

52-week sexual abuse awareness perpetrators program at the Kheper Life Enrichment Institute.[4]

Father was offered weekly one-hour monitored visits with the minors. He was 10 minutes to half an hour late every time. On two occasions he acted inappropriately and was required to sign "Guidelines for Court Ordered Monitored Visits." Moreover, he was uncooperative with the social worker and the minors' relatives, identifying only one day and time he was available for visitations. Father attempted to hug and kiss the minors even though the social worker told him that he should allow the minors to initiate any such contact. There were several times when both C.C.1 and C.C.2 did not want to visit father. On one occasion, father upset C.C.1, causing him to cry. On another occasion, C.C.2 said, "I don't want to go, my stomach hurts." Father took C.C.2 by the arm and tried to force her off the couch in the Department's lobby. When the social worker told father not to force C.C.2, he said, "OK [C.C.2], if you don't want to see me, there's no Christmas present for you." Because C.C.2 did not want to be away from grandmother and did not feel comfortable with the visits with father, the visits were moved to the interview room. That way, C.C.2 could look out the window and see grandmother on the couch in the lobby.

At the six-month review, the Department reported that father had been incarcerated on January 8, 2003. While father was at Pitchess Detention Center, the social worker sent father a letter informing him of the case plan and telling him to inquire with his counselor "to see which programs are available for you to participate in." He enrolled in an alcohol and drug class, and a general education program. However, he did not avail himself of individual counseling or the other available classes at Pitchess Detention Center for anger management, domestic violence, and parenting. Subsequently, the social worker sent father some articles to read on domestic violence and child abuse to allow him to supplement his court ordered programs.

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[4] A live scan revealed that father had been convicted of assault, battery, trespassing, petty theft, theft, and, on two occasions, transportation or sale of controlled substances.

Mother was released from prison in June 2003 and began complying with her obligations under the case plan. Father was eventually moved to North County Correctional Facility. Classes for anger management, domestic violence, and parenting were available to inmates. A drug and alcohol program was also available, as was individual counseling.

At the 12-month review, the Department reported that father was in partial compliance with parenting education classes, and also with an alcohol and drug treatment program. The Department noted that father was taking a program entitled Personal Relationships, but that program did not meet the requirements for court ordered domestic violence classes. The juvenile court was further informed that father was not in compliance with random alcohol testing, individual counseling for anger management and sexual abuse, or conjoint counseling.

The Department recommended terminating reunification services because: (1) father only partially complied with the case plan, (2) he continued to deny the allegations against him, (3) his release date from jail was uncertain, (4) he was facing imminent deportation to El Salvador, and (5) it was unknown when he would return to the United States, if ever. Nonetheless, the juvenile court ordered the Department to continue providing father with reunification services and to give him referrals for sexual abuse counseling while in custody.

At the 18-month review on February 27, 2004, the juvenile court was informed that the prison did not offer sexual abuse counseling.

Father requested transportation to the hearing, but that request was denied. He was not present at the hearing, but attorney Sue Dell appeared on his behalf. According to Ms. Dell, the Department did not provide reasonable reunification services because it failed to ensure that father participated in any type of sexual abuse program. Based on these "exceptional circumstances," Ms. Dell asked that father be given further reunification services.

The juvenile court stated: "[Father] is in custody, in state custody, got a federal I.N.S. hold, and appears as if he is going to be deported to El Salvador. [¶] He has not

completed the reunification services within the 18 months, and there is no extension or reason for extending it. I'm terminating his reunification services at this time." Father's attorney objected to the juvenile court ruling in father's absence. The juvenile court said father's presence was unnecessary. It then entered a home of mother order, subject to mother continuing her programs and living with grandmother, and ordered family preservation services.

In the subsequent minute order, the juvenile court indicated that it made Welfare and Institutions Code section 366.22[5] findings as to father and that reasonable services had been provided to meet the needs of the minors.

This timely appeal followed.

DISCUSSION

We are urged by father to reverse based on two contentions. (1) The juvenile court violated his due process rights by refusing to transport him to the February 27, 2004, hearing and by terminating his reunification services without notice. (2) The Department did not provide reasonable reunification services during his incarceration, so those services should have been extended. The Department parries with three counterpoints. (a) Father had no right to be present at the review hearing. (b) He did not object to the sufficiency of notice. (c) Substantial evidence supported the juvenile court's finding that the Department provided father with reasonable reunification services. The law supports the Department.

I. Due process.

A. *Father's absence from the hearing does not require reversal.*

Relying on section 366.21, father contends he had an absolute right to be present at any review hearing. Section 366.21, subdivision (a) provides: "Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of

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[5] All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

the date of the future hearing and of their right to be present and represented by counsel." According to father, ipse dixit, his due process rights were violated when the juvenile court conducted the February 27, 2004 hearing in his absence. In stark contrast, the Department contends that father's statutory right to be present at the hearing was cut-off due to his incarceration.

The Department alerts us to Penal Code section 2625. Subdivision (b) provides that a juvenile court must order notice to a prisoner in any proceeding that seeks to terminate parental rights or to adjudicate whether a child is a dependent. If a prisoner indicates his or her desire to attend the hearing, the court must order the prisoner produced pursuant to subdivision (d). In any other dependency proceeding, as indicated in subdivision (e), the production of a prisoner is discretionary. (See *In re Barry W.* (1993) 21 Cal.App.4th 358, 369-370 ["We . . . conclude that the fifth paragraph of the statute vests the trial court with discretion to determine whether it shall call for the prisoner's presence when the case does not involve termination of parental rights or a declaration of dependency. Accordingly, it follows that such a case may proceed without attendance by the prisoner-parent"].)

Because the February 27, 2004 review hearing did not adjudicate the dependency of the minors or terminate father's parental rights, the juvenile court was empowered to proceed in father's absence.

B. *Notice*.

Father contends that he did not receive proper notice of the 18-month review hearing. However, father did not object, so we deem the issue waived. (*Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1149.)

II. Termination of reunification services.

Under section 366.22, subdivision (a), if a case has been continued pursuant to section 366.21, subdivision (g)(1), the permanency review hearing must occur within 18 months of the date a child was removed from the physical custody of the parent. At that time, the juvenile court must order the return of the child to his or her parent absent a finding of detriment to the child. If a child is not returned to a parent, then the juvenile

court must terminate reunification services and set a hearing pursuant to section 366.26 within 120 days. In doing so, it must determine whether reasonable reunification services have been offered or provided.

Father contends that the orders of February 27, 2004, must be reversed because he was not given reasonable reunification services. He posits that: (1) the Department failed to identify programs available to him; (2) it incorrectly advised him of the requirements under the case plan[6] and failed to provide him with assistance in complying with the plan; (3) it failed to provide reasonable services, particularly after it recommended termination of reunification services at the 12-month review; and (4) the juvenile court abused its discretion by failing to continue reunification services even though the services provided were not reasonable.

These contentions lack merit.

A. *The standard of review*.

A juvenile court's finding that reasonable reunification services were provided is subject to review for substantial evidence. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1010 (*Mark N.*).)

B. *The applicable law*.

A trial court is obligated to inquire as to whether the Department identified the problems leading to the loss of custody, offered services to remedy those problems, maintained reasonable contact with the parent, and, finally, made reasonable efforts to assist the parents in areas where compliance proved difficult. (See *Mark N.*, *supra*, 60 Cal.App.4th at p. 1011.)

Specific rules apply to incarcerated parents.

Section 361.5, subdivision (e)(1) provides that reunification services must be offered to an incarcerated parent unless the juvenile court makes a finding of detriment to

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6 The juvenile court ordered father to attend individual counseling to address sexual abuse. However, when the Department wrote to father during his incarceration, he was told that he had been ordered to participate in a sexual abuse awareness program as well as individual counseling.

a child. Services may include, but shall not be limited to, maintaining contact between the parent and child through collect telephone calls, transportation services (where appropriate), visitation services (where appropriate), and reasonable services to extended family members for the care of the child.

"This statute reflects a public policy favoring the development of a family reunification plan even when a parent is incarcerated. [Citation.] The department must preliminarily identify services available to an incarcerated parent. [Citation.] It cannot delegate to an incarcerated parent the responsibility for identifying such services. [Citation.] The department's employees may not simply conclude that reunification efforts are not feasible on the sole ground the parent is incarcerated." (*Mark N.*, *supra*, 60 Cal.App.4th at pp. 1011-1012.)

Despite the foregoing, a juvenile court need not automatically continue reunification services if they were inadequate. As *Mark N.* noted: "A juvenile court has discretion to continue an 18-month hearing pursuant to section 352 when . . . no reasonable reunification services have ever been offered or provided to a parent. [Citations.] In exercising its discretion, the juvenile court should consider: the failure to offer or provide reasonable reunification services; the likelihood of success of further reunification services; whether [the minors'] need for a prompt resolution of [their] dependency status outweighs any benefit from further reunification services; and any other relevant factors the parties may bring to the court's attention. [Citation.]" (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1017.)[7]

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[7] Section 352, subdivision (a) provides in relevant part: "Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this chapter beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor. In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of his or her custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements."

C. *Substantial evidence supports the juvenile court's finding that the Department provided father with reasonable reunification services.*

Though father now raises various deficiencies in the reunification services offered by the Department, he only raised one deficiency below: the Department's failure to ensure that he attended a sexual abuse program. We deem the other objections, raised for the first time on appeal, waived because the juvenile court was not asked to consider them. (*In re Cheryl E.* (1984) 161 Cal.App.3d 587, 603 ["A party on appeal cannot successfully complain because the trial court failed to do something which it was not asked to do"].) In view of this waiver, we restrict our attention to the legal impact of the sole deficiency highlighted by father.

Indulging every inference in favor of the Department, we conclude that the juvenile court's order is supported by substantial evidence.

Prior to father's incarceration, he attended the court ordered programs and participated in monitored visitations with the minors. After he was incarcerated, he was informed of his obligations under the case plan by the social worker. The social worker spoke to various personnel at the correctional facilities to determine whether father was in compliance with the case plan. At one point the Department reported that father told the social worker to stop sending letters regarding his obligations because he was going to throw them away. When the social worker told father he needed to be aware of the case plan to be in compliance, father said he did not care. By the 12-month review father was attending parenting education classes and an alcohol and drug treatment program. But he denied the allegations in the section 300 petition, and he was not taking all the classes available to him.

Importantly, we note that father never objected to the case plan, and he never asked that it be modified once he was incarcerated. Therefore, he cannot complain that the case plan was insufficient. (*In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476.) We will not second guess the plan. Instead, we will assume that it was properly tailored to fit father's needs.

The inference is that the Department's efforts to help father comply with the case plan were reasonable given his incarceration and intransigence. (See *In re Misako R.* (1991) 2 Cal.App.4th 538, 547 ["The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances"].) It is true that father did not take the available domestic violence classes, or avail himself of individual counseling.[8] But "[r]eunification services are voluntary, . . . , and an unwilling or indifferent parent cannot be forced to comply with them. [Citations.]" (*In re Mario C.* (1990) 226 Cal.App.3d 599, 604.) We acknowledge that father did not have access to sexual abuse counseling. However, "prisons are run by the Department of Corrections, not the department of children's services." (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1363.) The Department cannot be blamed for the lack of certain services in prison. Father must bear the blame for being incarcerated.

Even if we were to conclude that the juvenile court made a factual error, we would consider the error harmless.

In *Robin v. Superior Court* (1995) 33 Cal.App.4th 1158, 1166 (*Robin*), the court considered the effect of a juvenile court's erroneous decision to terminate reunification services for an incarcerated parent and set a section 366.26 hearing even though the reunification services were not reasonable. The *Robin* court stated: "We cannot say the error was harmless. [Citation.] Reasonable reunification services may well have made a difference with *this* father who, from the first day to the last, expressed his desire to take custody of his daughter, who for at least the first six months did everything possible to achieve his goal and who, during the second six months, tried unsuccessfully to get the attention of the [Orange County Social Services Agency]. A single parent/child visit

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8 There was no evidence that the minors were in therapy and that a therapist recommended conjoint therapy. Thus, there is no evidence that conjoint therapy was a possibility, let alone appropriate.

could have been a building block for other visits and the establishment of an important relationship. [Citation.]" (*Id*. at p. 1166.)

Father's case is distinguishable from *Robin*. First, this is not a case that is on a path toward termination of his parental rights. The juvenile court entered a home of mother order and instructed the Department to provide family preservation services. Second, father proved uncooperative at times, he did not complete all the classes available to him in prison, and he consistently denied the allegations contained in the section 300 petition. These facts demonstrate that father was not making his best efforts to ameliorate the problems that resulted in the detention of the minors. Third, father has a criminal past, a history of physical and sexual abuse, and the minors stated that they do not wish to live with father. Fourth, once father is released, he is due to be deported to El Salvador. These facts cast serious doubt on father's ability to reunify with the minors, and it cannot be said that further reunification services would make a difference.

D. *Abuse of discretion.*

Because we reject father's factual argument regarding the reasonableness of reunification services, we need not consider his argument that the juvenile court should have exercised its discretion to continue reunification services under section 361.5, subdivision (a) and *Mark N.*

DISPOSITION

The orders of February 27, 2004, are affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, P. J.
BOREN

_____, J.
DOI TODD